IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 898 OF 2000

Laxman Mahadu Waghmare .... Appellant.
(Orig.Accd.)

Versus

The State of Maharashtra ....Respondent.

Mr.M.K.Kocharekar, Adv. (appointed) for the appellant.

Mrs.U.V. Kejriwal, APP for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

70th Oct., 2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the II Additional Sessions Judge, Raigad-Alibag on 25.4.2000 in Sessions Case No.174/98, the appellant-original accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned advocate for the appellant and the learned additional Public Prosecutor we have scrutinized and reappreciated the entire evidence on record.

3. The prosecution story stated briefly is that on 23.7.1998 the victim Revindra had gone to graze his cattle and did not return home and therefore on the next day search was made and his body was found in the compound of the field of the complainant. He therefore lodged a complaint to the police, police took up investigation and during the course of investigation it transpired that the accused had made certain extra judicial confession and therefore he was arrested and prosecuted. The prosecution examined in all seven witnesses and on appreciation of their evidence the learned trial Judge came to the conclusion of guilt and and convicted the accused as aforesaid. This order of conviction is impugned before us.

4. We have considered the entire evidence on record and on reappreciation of the same we are of the firm view that no error of fact or law is committed by the learned trial Judge in coming to the conclusion of guilt. The evidence was adeqaute, it was properly marshaled by the learned Judge and conviction is most certain sustainable on the conclusions drawn by the learned trial Judge.

5. P.W. 1 – Pandurang More is police patil who found the dead body with injuries on it and therefore lodged First Information Report about such discovery. P.W. 2 – Rajendra Deshmukh is the brother of the deceased Ravindra and told the deceased Ravindra to go home. While he was so going home, he saw accused going after the deceased. Next day he heard about the murder, identified the body of the deceased, clothes of the deceased and has proved the same in the Court. He is therefore a witness who has immediately seen the accused and the victim going together.

6. P.w. 3 – Vishvanath Waghmare is an independent witness who has met the accused and when he met the accused, the accused told him that he has killed Ravindra. This witness has identified the blood stained clothes of the accused. He is therefore a witness to extra judicial confession made by the accused himself. The cross examination of this witness does not reveal any reason why testimony of this witness should be disbelieved. P.W. 4 – Sindhu Malsure is panch witness to blood stained stones. P.W. 5 – Dhondu Deshmukh is panch witness to the recovery of blood stained clothes at the instance of the accused. P.W. 6 – Ambadas Gangurde is the Police Sub-Inspector who functioned as investigating officer and has proved the statements recorded by him. He also had arrested the accused. Earlier investigation was with P.W. 7 – Sanjiv Pimpale who handed it over to P.W. 6 – Ambadas Gangurde. This is the entire evidence on the basis of which the learned trial Judge found the accused guilty. In so far as the findings that the accused was responsible for the homicidal death of the victim is concerned it is liable to be confirmed as supported by cogent evidence. However it would be unsafe to convict the accused under section 302 of Indian Penal Code. He has confessed of having stoned the victim. The injuries are not multiple. There is no proof on record as to the motive. It appears to be a consequence of petty quarrel between the accused and the victim. There is also no evidence as to when death was exactly caused. That it was caused by stoning is proved. Therefore it is difficult to infer in such circumstances intention on the par of the accused to commit murder. He must have hit the victim with stones as a result of some quarrel and having realised that he has confessed to his hitting. In our opinion, no case is made out for holding that the accused was guilty of

intentionally causing death of the victim. However the accused cannot escape liability of knowledge that it is likely that the injuries caused by him may result into death. He was not certain that it will be resulting in death and therefore casually mentioned to the witness that he has hit the victim. In our opinion, therefore it is a fit case where conviction under section 302 of IPC is liable to be set aside. It is accordingly set aside. Instead accused is convicted under section 304 (II) of Indian Penal Code and is sentenced to suffer imprisonment for the period he has already undergone. Since he has undergone this punishment inflicted by this Court he is entitled to be released immediately. He be so released if not otherwise require. Appeal thus stands partly allowed.